United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF

75-2096

To be argued by
DAVID L. BIRCH

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

----------X

RODNEY R. HAYMES,

Plaintiff-Appellee,

-against-

PAUL J. REGAN, Commissioner, New York State Parole Board; PAROLE BOARD OF September 29, 1974,

Defendants-Appellants.

----------X

B
P/S

BRIEF FOR DEFENDANTS-APPELLANTS

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Defendants-
Appellants
Office & P.O. Address
Two World Trade Center
New York, New York 10047
Tel. No. (212)488-3447

SAMUEL A. HIRSHOWITZ
First Assistant Attorney General

DAVID L. BIRCH
Deputy Assistant Attorney General
of Counsel

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATUTES

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

----------X

RODNEY R. HAYMES, :

Plaintiff-Appellee, :

-against- : 75-2096

PAUL J. REGAN, Commissioner, New York State Parole Board; PAROLE BOARD OF 7/29/74, :

Defendants-Appellants. :

----------X

BRIEF FOR DEFENDANTS-APPELLANTS

Question Presented

Does an inmate's right to receive a statement of reasons why he was denied parole accord him, in addition, the constitutional right to a statement of the release criteria observed by the Parole Board and the factors considered by the Board in determining whether those criteria were met by the inmate?

Statement

This is an appeal from an order of the United States District Court for the Southern District of New York (Knapp, J.) dated May 27, 1975, which granted plaintiff-appellee's motion for a preliminary injunction requiring the Parole Board to

furnish plaintiff-appellee (1) a statement of the ground of its decision of July 29, 1974 denying him release from imprisonment on parole and the essential facts upon which its decision was based and (2) a statement of the release criteria observed by it on July 29, 1974 and the factors considered by it in determining whether those criteria were met with respect to plaintiff-appellee. On September 2, 1975, a panel of this Court granted an application by defendants-appellants for a stay of the District Court's order pending appeal.

Statement of Facts and Proceedings Below

Plaintiff is presently incarcerated in the Attica Correctional Facility, Attica, New York pursuant to a judgment of conviction of the crime of manslaughter in the first degree rendered by the Erie County Court (Heffron, J.) after a trial by jury. He was sentenced on August 10, 1971 to an indeterminate term not to exceed 10 years. His conviction was affirmed by the Appellate Division in 39 A D 2d 1016 (4th Dept., 1972) and by the Court of Appeals in 34 N Y 2d 639 (1974).

On July 29, 1974, plaintiff met with three members of the New York State Parole Board. The Board then sent plaintiff a written parole denial slip stating "Held to 7/75 Board with improval record."*

In a pro se complaint dated September 3, 1974, plaintiff alleged that his rights under the New York Correction Law and the Fourteenth Amendment to the United States Constitution were denied by the procedures used by the Parole Board. An amended complaint, making substantially similar allegations, was filed by counsel on April 2, 1975. Plaintiff requested, inter alia, that an injunction be issued ordering the Parole Board to provide inmates** with "adequate written notice of the reasons for their denial of parole." (amended complaint, ¶ 35(4). (A. 48).***

Plaintiff renewed his request for a preliminary injunction and certificate of a class action by affidavit sworn to March 27, 1975. In a Memorandum dated May 6, 1975 and an order dated May 27, 1975, the District Court granted a preliminary injunction requiring the Parole Board to provide the named plaintiff with (1) a statement of the ground of its decision of

* Plaintiff was again denied parole in July 1975.
** The request for class relief is still pending before the District Court.
***Page references preceded by A. refer to Appendix.

July 29, 1974, denying plaintiff release from imprisonment on parole and the essential facts upon which the defendants' decision was based and (2) the release criteria observed by the Parole Board on July 29, 1974, and the factors considered by them in determining whether these criteria were met with respect to the plaintiff.*

Opinion of the District Court

In its memorandum dated May 6, 1975 the District Court, Knapp, J. granted the preliminary injunction relying on this Court's decision in United States ex rel. Johnson v. Chairman, New York State Board of Parole, 500 F. 2d 925 (2d Cir.) vacated and remanded to be dismissed as moot sub. nom. Regan v. Johnson, 419 U.S. 1015 (1974) and cases cited therein at 934-935.**

---

* An evidentiary hearing on the other allegations of the complaint was held in May, 1975. A decision has not yet been rendered.

** In a memorandum endorsement dated July 2, 1975, the District Court, Knapp, J. denied defendants' motion to modify his order dated May 27, 1975. The basis of the motion was that the case law on which the District Court relied did not support the second paragraph of the order.

ARGUMENT

AN INMATE'S RIGHT TO RECEIVE A STATEMENT OF REASONS WHY HE WAS DENIED PAROLE DOES NOT ACCORD HIM, IN ADDITION, THE CONSTITUTIONAL RIGHT TO A STATEMENT OF THE RELEASE CRITERIA OBSERVED BY THE PAROLE BOARD AND THE FACTORS CONSIDERED BY THE BOARD IN DETERMINING WHETHER THOSE CRITERIA WERE MET BY THE INMATE.

Chapter 131 of the laws of New York 1975 (June 3, 1975) amended New York Correction § 214, by adding subdivision six, which states:

> "If, after appearance before the board pursuant to subdivision four of this section, the prisoner is denied release on parole, the board shall inform such prisoner, in writing and within two weeks of such appearance, of the facts and reason or reasons for such denial."*

Whether the source of an inmate's right to receive a statement of reasons why he was denied parole is the Correction Law or the Fourteenth Amendment to the United States Constitution, United States ex rel. Johnson v. Chairman, New York Board of Parole, 500 F. 2d 925 (2d Cir.) vacated and remanded to be

* The statute became effective sixty days after becoming a law.

dismissed as moot sub nom. Regan v. Johnson, 419 U.S. 1015 (1974),* that right does not require the Parole Board to also provide him with a statement of the release criteria observed by it and the factors considered by it in determining whether those criteria were met with respect to a particular inmate.

Johnson, supra, on which the District Court relied for its decision, clearly did not intend the Parole Board to set forth at one time its release criteria.** In explaining that the primary function of providing an inmate who has been denied parole with a statement of reasons for the denial is to expedite judicial review, this Court acknowledged that whether or not the parole board formulates and publishes criteria and guidelines, the statement of reasons will demonstrate to the Court and serve as evidence of what criteria the Board is using. 500 F. 2d at 929.

---

* What process is due an inmate denied parole is pending before the Supreme Court in Weinstein v. Bradford, 357 F. Supp. 1127 (E.D.N.C. 1973) revd. ___F.2d___ (4th Cir. 1974) cert. granted ___U.S.___ 43 U.S.L.W. 3636 (June 2, 1975).

** In any event, release criteria are established not by the Parole Board, but by the legislature. See Correction Law § 213. In view of the ultimate dismissal of Johnson as a result of the Supreme Court disposition upon the appeal by the State, we suggest that reliance on the panel's opinion in Johnson is, to say the least, dubious. It no longer has the stare decisis effect ascribed to it by the District Court.

The Court also stated, at 933:

> "Hopefully a body of rules, principles and precedent would be established, which would promote consistency by the Board... and provide a basis for critical reappraisal by trained expects." (emphasis supplied).

Assuming arguendo, that the source of a New York inmate's right to a statement of reasons is the Due Process clause, this Court has not held that the Constitution requires that a statement of release criteria be provided. This Court stated in Johnson, supra at 934:

> "To satisfy minimum due process requirements a statement of reasons should be sufficient to enable a reviewing body to determine whether parole has been denied for an impermissible reason or no reason at all. For this essential purpose, detailed findings of fact are not required, provided the Board's decision is based upon consideration of all relevant factors and it furnishes to the inmate both the grounds for the decision (e.g., that in its view the prisoner would, if released, probably engage in criminal activity) and the essential facts upon which the Board's inferences are based (e.g., the prisoner's long record, prior experience on parole, lack of a parole plan, lack of employment skills or of prospective employement and housing, and his drug addiction).
>
> * * *
>
> "[W]e conclude...that due process does require the New York State Parole Board to furnish state prisoners a written statement of reasons when release on parole is denied." (934)

All of the cases cited by the District Court or this Court in Johnson, at 934-35, as authority for the holding that due process requires the Parole Board to provide a statement of reasons when it denies an inmate parole, Childs v. United States Board of Parole, 511 F. 2d 1270 (D.C. Cir., 1974); King v. United States, 492 F. 2d 1337 (7th Cir. 1974); Johnson v. Heggie, 362 F. Supp. 851 (D. Colo., 1973); United States ex rel. Harrison v. Pace, 357 F. Supp. 354 (E.D. Pa., 1973); In re Sturm, 11 Cal. 3d 258, 113 Cal. Rptr. 361, 52 P. 2d 97 (1974) (en banc.), and Monks v. New Jersey State Board of Parole, 58 N.J. 238, 277 A. 2d 193 (1971), with the exception of Craft v. Attorney General of the United States, 379 F. Supp. 538 (M.D. Pa., 1974) hold that a parole board is required to provide an inmate denied parole solely with a statement of reasons for the denial.* No case except Craft, supra, has held that the parole board must, in addition to a statement of reasons, also provide an inmate with a statement of its release criteria and the factors considered by it in deciding whether these criteria were met.

* Accord, Mower v. Britton, 504 F. 2d 396 (10th Cir., 1974); Mitchell v. Sigler, 389 F. Supp. 1012 (N.D. Ga., 1975); Cooley v. Sigler, 381 F. Supp. 441 (D. Minn., 1974); Lupo v. Norton, 371 F. Supp. 156 (D. Conn. 1974); Beckworth v. New Jersey Parole Board, 62 N.J. 348, 301 A. 2d 727 (1973); Solari v. Vincent, 46 A D 2d 453 (2d Dept., 1975) app. pending; Cummings v. Regan, 45 A D 2d 222 (4th Dept., 1974) dism. as moot ___ N Y 2d ___ (1975). Contra (no right to reasons) Scarpa v. Board of Parole, 477 F. 2d 278 (4th Cir., 1973) vacated as moot 414 U.S. 809 (1974); Wiley v. U.S. Board of Parole, 380 F. Supp. 1194 (M.D. Pa. 1974); Ornitz v. Robuck, 366 F. Supp. 183 (E.D. Ky., 1973); Barradale v. U.S. Board of Parole, 362 F. Supp. 338 (M.D. Pa. 1973); Stone v. U.S. Board of Parole, D. Md. 1973): Harrison v. Robuck, 508 S.W. 2d 72) (Ct. of Appeals, Ky., 1974); Cummings v. Regan, 45 A D 2d 415 (3rd Dept., 1974) app. dism. as moot ___ N Y 2d ___ (1975).

Even in Morrissey v. Brewer, 408 U.S. 471 (1972) and Wolff v. McDonnell, 418 U.S. 539 (1974) where the inmate's "right" to conditional liberty or reduced sentence was a great deal more vested than his potential release on parole, all that the Court required, with respect to the communication of a decision, was that a written statement of reasons and facts relied on be provided.

This Court in Johnson, supra stated that the primary purpose of a statement would be to facilitate judicial review. Not only is that purpose sufficiently served by a statement of reasons but the federal judiciary's requiring the Parole Board to divulge at one time its release criteria would involve the judiciary in defining the substantive nature of a state created benefit rather than merely limiting itself to its function of deciding now that benefit can be distributed or denied.

The other functions of a statement of reasons (promoting thought by the decider, promoting rehabilitation, etc.) are also sufficiently served by a statement of reasons. Requiring the Parole Board also to provide a statement of its release criteria would not further those purposes sufficiently enough to outweigh the increased burden on the Parole Board and the resultant increased jurisdiction of the federal court to shape and control what is a decision of the state authority. The continual formalization of Parole Board actions as a result of judicial intrusion would not be beneficial to the continuation of the parole system.

CONCLUSION

THE ORDER OF THE DISTRICT
COURT SHOULD BE MODIFIED
TO DELETE THE SECOND
PARAGRAPH

Dated: New York, New York
September 16, 1975

Respectfully submitted,

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Defendants-
Appellants

SAMUEL A. HIRSHOWITZ
First Assistant Attorney General

DAVID L. BIRCH
Deputy Assistant Attorney General
of Counsel

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

MAGDALINE SWEENEY , being duly sworn, deposes and says that she is employed in the office of the Attorney General of the State of New York, attorney for Defendants-Appellants herein. On the 16th day of September , 1975 , s he served the annexed upon the following named person :

JANE BLOOM, ESQ.
MID-HUDSON VALLEY LEGAL SERVICES PROJECT
(Monroe County Legal Assistance Corp.)
50 Market STreet
Poughkeepsie, New York 12601

Attorney in the within entitled appeal by depositing a true and correct copy thereof, properly enclosed in a post-paid wrapper, in a post-office box regularly maintained by the Government of the United States at Two World Trade Center, New York, New York 10047, directed to said Attorney at the address within the State designated by her for that purpose.

Magdaline Sweeney

Sworn to before me this
16th day of September , 1975

David G. Bress

Assistant Attorney General
of the State of New York